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July 13, 2017

BY ECF:

Honorable Valerie E. Caproni
United States District Court
Southern District of New York
40 Foley Square
New York, NY 10007

Re: United States v. Percoco, et al., S1 16 Cr. 776 (VEC)

Dear Judge Caproni:

We submit this letter on behalf of defendants Peter Galbraith Kelly, Jr. and Joseph Percoco. On July 7, 2017, we submitted a letter to the Court requesting that the Government be ordered to disclose its witness list, exhibit list, and 3500 material 90 days before trial. (Doc. No. 270). On July 12, 2017, the Government submitted a response which suggests that defendants did not participate in a meet-and-confer. (See Doc. No. 276 at 4 (“The defendants did not seek to meet and confer or provide any other response, *see* Local Criminal Rule 16.1; rather, the defendants filed the instant request for the Court to set deadlines for pretrial disclosures.”)). Any such suggestion is false. As the attached email correspondence describes, we repeatedly attempted to engage the Government in a meet-and-confer process:

- On May 31, we initiated a call with the Government to meet-and-confer regarding a disclosure schedule.
- On June 12, we presented a specific proposal to the Government.
- On June 13, in response to our request for a response, the Government emailed that it would respond to our proposal “as appropriate.”
- On June 16, in response to further inquiry from us, the Government emailed that it would respond “soon.”
- On June 20, in response to further inquiry from us, the Government emailed that it would respond “tomorrow.”
- On June 21, at 11:08 PM, the Government emailed: “We intend to provide a response to your proposed pretrial disclosure schedule in advance of filing our responsive motions.”
- On June 22, we initiated a call with the Government during which we advised it that we hoped not to involve the Court. During the call, the Government urged us not to go to the Court until its response, which it said it hoped to provide before the Government’s opposition brief was due (June 30).

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- On June 28, the Government called us to advise that it did not anticipate providing a response until after the opposition brief was due.
- On June 30, we emailed offering to speak by phone over the weekend. In response, the Government emailed that it would not provide a response until after the July 4 holiday.
- On July 5, the Government finally provided its response, which did not indicate that it was flexible or open to a further counter-proposal.

Respectfully submitted,

/s/ Daniel M. Gitner

Daniel M. Gitner
Jun Xiang
Samantha J. Reitz

CC: All Counsel (Via ECF)